IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

CRP.No. 1033 of 1996(C)

ORDER DATED 21.12.1995 IN AA.47/1990 of APPELLATE AUTHORITY (LR),ATTINGAL

REVN. PETITIONER: RESPONDENT:RESPONDENT:

CHERIAN VARGHESE, BOLCK NO.13,
EX-SERVICEMEN'S COLONY,
VECHOOCHIRA, PATHANAMTHITTA. (DIED)

ADDITIONAL PETITIONERS IMPLEADED:

2. THANKAMMA VARGHESE, W/O.LATE CHERIAN VARGHESE,
MALAYIL PUTHIYA VEEDU, VECHOOCHIRA.

3. SHYNU VARGHESE, S/O.CHERIAN VARGHESE,
MALAYIL PUTHIYA VEEDU, VECHOOCHIRA.

LEGAL HEIRS OF THE DECEASED REVISION PETITIONER ARE IMPLEADED AS ADDITIONAL PETITIONERS 2 AND 3 AS PER ORDER DATED 24.1.2006 IN I.A.NO.2380/05.

BY ADV. SRI.T.M.ABDUL LATHEEF
SRI.K.RADHAKRISHNAN (P)

RESPONDENT: APPELLANT: APPLICANT:

THOMAS THOMAS, MALAYILPUTHIYAVEETTIL,
KEEZHUKARA MURI, KOZHENCHERRY VILLAGE,
PATHANAMTHITTA DISTRICT.

ADDITIONAL RESPONDENT IMPLEADED:

ADDL.2. STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
TRIVANDRUM.

ADDL.R2 IS IMPLEADED AS PER ORDER ON C.M.P.NO.4689/96 DATED 18.12.1996.

R1 BY ADV. SRI.PHILIP MATHAI
SRI.GENEROUS PALLATH

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

C.R.P. NO. 1033 OF 1996 C

Dated this the day of 14th November, 2007

O R D E R

The respondent in S.M.No.46 of 1987, on the file of the Court of the Land Tribunal, Pathanamthitta, is the revision petitioner. The Land Tribunal dismissed the suo motu proceedings initiated in favour of Thomas Thomas, holding that he is not a cultivating tenant and that the property belongs to the respondent, which has not vested in the Government. On appeal by Thomas Thomas, the Appellate Authority, in fact, reversed the decision rendered by the Land Tribunal and held that Thomas Thomas is a lessee entitled to fixity of tenure. The order of the Land Tribunal was set aside by the Appellate Authority and the Land Tribunal was directed to take further action in the matter.

2. Strictly speaking, the order of the Appellate Authority is not a remand order, but an order conclusively determining the right of parties. Therefore, I hold that the revision is maintainable against the order passed by the Appellate Authority on 21.12.1995.

3. The case of Thomas Thomas is that he came into possession of the property, having an extent of one acre, on oral pattom. The proceedings were initiated on the basis of the report of the Special Revenue Inspector.

4. The respondent in the suo motu proceedings, namely, Cherian

Varghese, contended that Thomas Thomas is not a cultivating tenant. Thomas Thomas is the brother's son of respondent Cherian Varghese. The property belonged to Poyyanil Joseph George from whom Cherian Varghese purchased the property as per registered sale deed No.793/1118 M.E. of Aranmula Sub Registry. Cherian Varghese further contended that he effected improvements in the property and that applicant Thomas Thomas was only a care taker. Till 1985, Thomas Thomas accounted the income to Cherian Varghese and later, he failed to account. According to Cherian Varghese, he directed Thomas Thomas to vacate the property and thereupon the proceedings were caused to be initiated before the Land Tribunal under Section 72C of the Kerala Land Reforms Act.

5. Thomas Thomas, the applicant, filed a replication and put forward a new case that even while the property was in the possession of Poyyanil Joseph George, the father of the petitioner was cultivating the property under an oral lease granted sixty years back. The oral lease continued and even after Cherian Varghese purchased the property, the lease continued. Thomas Thomas claimed that he is the successor in interest of the original lessee and, therefore, he is entitled to fixity of tenure. The case of the respondent Cherian Varghese that the petitioner was a care taker was denied by him in the replication.

6. The Land Tribunal, on a detailed consideration of the facts and circumstances of the case and the evidence on record, held that the property was purchased by the respondent, Cherian Varghese as per a registered assignment deed executed in the year 1118 M.E. and at that time, the property was not outstanding as per an oral lease in favour of the father of the applicant, as contended by the applicant. The Land Tribunal also found that there was no entrustment by the respondent to the applicant and the applicant was only a care taker. The relationship between the parties was taken note of by the Land Tribunal. The Land Tribunal also took note of the fact that the original owner Poyyanil Joseph George had executed an assignment deed in respect of another parcel of land in the year 1950 in favour of the father of the applicant. This would also improbabilise the case of the applicant that his father was holding under an oral lease from Poyyanil Joseph George. The admissions made by the applicant in his evidence were also taken note of by the Land Tribunal.

7. The Appellate Authority has not independently considered the oral and documentary evidence in the case. The Appellate Authority only narrated the facts and abruptly came to the conclusion that the applicant's father was in possession of the property under an oral lease and the applicant continued to possess the property as a cultivating tenant. The

Appellate Authority also found that the land is vested in the Government free from all encumbrances and the applicant is eligible for assignment.

8. I am of the view that the Appellate Authority has not discharged its function as an appellate forum. There was no independent consideration of the facts, pleadings and evidence. There is no finding as to when the property was taken on lease. There is also no finding whether the lease was granted in favour of the father of the applicant or in favour of the applicant. The appellate Authority also erroneously cast the burden of proof on the respondent in the application, namely, Cherian Varghese. There is no burden of proof on the respondent to disprove the tenancy claim made by the applicant. The Appellate Authority, without any basis, found that the respondent Cherian Varghese purchased the property while the lease was subsisting. Neither there is any discussion nor any clear finding as to how the applicant's father got the lease. There is no rent receipt or any other document to prove such a lease. The Appellate Authority was also under the impression that mere possession is enough to qualify a person to get assignment of the land under the Land Reforms Act. Only a cultivating tenant in respect of a land would be entitled to purchase the right, title and interest of the landlord and intermediaries. Equally fallacious is the finding of the Appellate Authority that the father of Thomas Thomas being not a party to the sale deed in

favour of Cherian Varghese, the document is of no effect. It is true that a subsisting lease would not be affected by a registered instrument executed by the lessor in favour of a stranger and the stranger purchaser will be bound by the subsisting lease. To apply that principle, there must be evidence to establish that at the time when the original owner was holding the property, there was a lease in favour of a person and that leasehold right continued to exist in that person or his successor despite the transfer by the owner to a third party. Relevant facts were not taken note of by the Appellate Authority and irrelevant facts were made the basis for arriving at the conclusion. Facts involved in the case were not properly appreciated and the questions of law were not correctly decided by the Appellate Authority. Non-consideration of the respective case put forward by the parties in a legal and proper manner would vitiate the order passed by the Appellate Authority.

9. I am of the view that the Appellate Authority was not justified in holding that the applicant Thomas Thomas is a cultivating tenant entitled to fixity of tenure. I am inclined to set aside the order, dated 21.12.1995, passed by the Appellate Authority and remand the case to the Appellate Authority for fresh disposal. The Appellate Authority shall dispose of the case in accordance with law after taking note of the pleadings and the documentary and oral evidence on record.

In the result, the Civil Revision Petition is allowed. The order passed by the Appellate Authority is set aside and the case is remanded to the Appellate Authority for fresh disposal in the manner indicated above. No order as to costs.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

C.R.P.NO. 1033 OF 1996 C

O R D E R

14th November, 2007